



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW 07-04

CHRISTOPHER D. HARRINGTON
HARRINGTON LAW OFFICE
447 ADA DRIVE SE
ADA MI 49301

COPY MAILED

JUL 02 2004

OFFICE OF PETITIONS

In re Application of :
Kent Clifton Garcie, Jr. :
Application No. 10/825,278 : DECISION REFUSING STATUS
Filed: 15 April, 2004 : UNDER 37 CFR 1.47(b)
Attorney Docket No. HR 3.02 :

This is in response to the petition filed under 37 CFR 1.47(b) on 15 April, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.
Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 15 April, 2004, with a declaration naming Kent Clifton Garcie, Jr., as the sole inventor signed by apparently signed by Mark Jeffrey Lowe, President, Hardware Resources.

Petitioner asserts that the inventor was employed with Hardware Resources but was terminated prior to signing the declaration. Petitioner further asserts that the inventor refuses to sign the declaration.

A grantable petition under 37 CFR 1.47(b) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a statement of the last known address of the non-signing inventor;
- (5) proof of proprietary interest, and
- (6) proof of irreparable damage.

The petition lacks items (1), (2), (5), and (6).

In regards to item (1), petitioners must supply proof that a copy of the application (specification including claims, drawings, if any, and the declaration) was sent or given to the non-signing inventor for review.¹ Petitioners should submit a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Likewise, before a *bona fide* refusal to sign can be alleged, petitioners must show that the application papers were sent or given to the non-signing inventor. If the inventor refuses to sign the declaration in writing after being sent or given the application, a copy of that written refusal should be supplied with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 has not been presented. While the declaration appears to have been signed by the president of the corporation, the corporate officer signing on behalf of the non-signing inventor must identify his/her and title in the declaration. If the oath or declaration is not signed by an officer of the corporation, then proof of authority of the person signing on behalf of the corporation must be submitted.²

In regard to item (5), petitioner has not established that the Rule 1.47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application.³ Petitioner may establish proprietary interest by filing a copy of

¹MPEP 409.03(d).

²MPEP 409.03(b).

³MPEP 409.03(f).

the employment agreement between the non-signing inventors and the Rule 1.47(b) applicant (company); a copy of an assignment agreement showing that the invention disclosed in the application is assigned to the Rule 1.47(b) applicant; or a legal memorandum signed by an attorney familiar with the law of the jurisdiction stating that a court of competent jurisdiction would by the weight of authority in that jurisdiction award the title of the invention to the Rule 1.47(b) applicant.

In regards to item (6), petitioner must provide proof of irreparable damage in accordance with MPEP 409.03(g). A statement by applicant that the filing is necessary to prevent irreparable damage is sufficient.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
 220 20th Street S.
 Customer Window, Mail Stop Petition
 Crystal Plaza 2, Lobby, Room 1B03
 Arlington, VA 22202

Telephone inquiries related to this decision should be directed to the undersigned at (703)308-6918.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions